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February 3, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

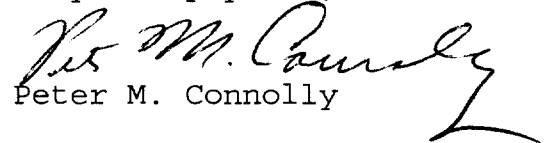
Re: ET Docket No. 95-18

Dear Ms. Salas:

Herewith transmitted, on behalf of TMI Communications and Company, Limited Partnership, are an original and six copies of its Comments in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Peter M. Connolly

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section)
2.106 of the Commission's Rules) ET Docket No. 95-18
to Allocate Spectrum of 2 GHz)
for use by the Mobile-Satellite)
Service)

**COMMENTS OF TMI COMMUNICATIONS AND
COMPANY, LIMITED PARTNERSHIP**

TMI Communications and Company, Limited Partnership ("TMI") hereby files its comments on the Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order in the above-captioned proceeding.¹

TMI is a Canadian-licensed mobile-satellite service ("MSS") operator currently providing service in the L-Band (1.5/1.6 GHz) via a geostationary satellite (MSAT-1) located at 106.5° west longitude.

TMI is concerned that the NPRM fails to recognize that any payments made by MSS parties to terrestrial licensees for vacating

¹In the Matter of Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order, FCC 98-309, released November 15, 1998 ("NPRM").

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2 GHz MSS spectrum must be kept within reasonable bounds -- or else there may be no MSS service. Also, equity requires that MSS earth station licensees should contribute to such payments.

BACKGROUND

On September 26, 1997 TMI filed a Letter of Intent ("LOI"), advising the FCC of its interest in operating a non- U.S. licensed space station -- the TMI CANSAT-M3 satellite -- to provide MSS to, from and within the United States, using frequencies in the 2 GHz band (1990-2025 and 2165-2200 MHZ). TMI's LOI, which was "accepted for filing" in March 1998,² was filed in accordance with the procedures set forth in the relevant FCC Orders and procedural public notices.³ TMI participated in the FCC's January 7, 1999 informal meeting among 2 GHz applicants and expects to provide 2 GHz service in the United States as proposed in its LOI.

²See "Satellite Application and Letters of Intent accepted for filing "Public Notice, Report No. SPB-119, released March 19, 1998.

³See Report and Order, 12 FCC Rcd 23891(1997); "Cut-Off Established For Additional Space Station Applications, Letters of Intent And Amendments to Pending Applications In the 2 GHz Frequency Bank," Public Notice, DA97-1550, Report No. SPB-88, released July 22, 1997 ("2 GHz Cut-Off Notice"); "Clarification and Corrections to Public Notices Report Nos. SPB-88 and SPB-89 [etc.]; Public Notice Report No. SPB-95, released August 13, 1997. ("Corrected 2 GHz Cut-Off Notice"); "Extension of Cut-Off dates for applications, Letters of Intent, and Amendment to application in the 2 GHz and 36-51.4 GHz frequency bands, "Public Notice, Report No. SPB-99, released September 4, 1997 (Extension of cut-off. date notice).

**I. BAS and FS Reimbursements Must Be Kept
Reasonable and The FCC Should Recognize
That The PCS/Microwave Proceeding
Is Not A Good Model For This Proceeding**

TMI is concerned about the Commission's proposals regarding payment by MSS licensees of the costs of replacing or retuning Broadcast Auxiliary Service ("BAS") equipment in the 1990-2110 MHz band and of relocating Fixed Service ("FS") microwave licensees in the 2165-2200 MHz band to new frequency bands.

The NPRM, while attempting to grapple with some of the difficulties inherent in devising a solution to the problem of reimbursing incumbent operators for relocation expenses (See, e.g. Paragraphs 35-50), fails to take into account that if a fair and equitable solution to those problems cannot be found, the establishment of 2 GHz MSS service in the United States is in jeopardy.

At various points in the NPRM,⁴ the FCC cites the 1996 Microwave Cost Sharing proceeding as a proposed model for the payment/reimbursement structure for 2 GHz MSS.⁵

⁴See, e.g., ¶35, ¶42, ¶44, ¶47, ¶48, ¶49, ¶50 and ¶51.

⁵See In re Amendment to the Commission's Rules, Regarding a Plan for Sharing the Costs of Microwave Relocation (Microwave Cost Sharing), WT Docket No. 95-157, First Report and Order and Second Notice of Proposed Rulemaking 11 FCC Rcd 8825, Appendix A (1996).

However, that proceeding, in which the FCC adopted rules regulating payments to microwave licensees in the 1850-1990 MHz bands by incoming broadband PCS licensees, is probably not a good model for this proceeding. If its principles are applied here, it will likely create a system of vast complexity and huge expense for MSS licensees, which might render 2 GHz MSS untenable.

The PCS proceeding involved an easily ascertainable and relatively small universe of private microwave facilities, licensed for specific geographic coordinates. PCS licensees only had to pay for relocation of microwave facilities as they needed spectrum for a specific geographic area. And the reimbursement system took into account the value, for PCS licensees, of being first in a particular area, thus reducing the costs for later licenses. Also, at least at the outset, the process involved only U.S. licensees, and no treaty or other international issues were raised by the payment or reimbursement requirements.

By contrast, this proceeding involves the probable nationwide retuning and/or replacement or relocation of many thousands of BAS and FS facilities. The actual number of such facilities and the costs of relocating them are much more difficult to determine than they were in the prior proceeding. At present, those seeking to provide MSS service cannot even reasonably estimate what their costs will be or when those costs will be incurred. In the "Order"

portion of the NPRM, the FCC discussed a request from ICO Services Ltd. and six other entities that BAS and FS licensees be required to submit technical and financial information about their facilities in order that MSS licensees might have some idea of the costs they will be facing.⁶ The FCC refused that request, finding that "the formation of regulatory policy does not required the level of detail that the petitions request."⁷ Thus, MSS applicants/LOI filers are now "flying blind" as to a crucial aspect of their future business.

**II. The FCC Should Consider A Moratorium on
The Licensing of New 2 GHz BAS and
FS Facilities**

We would also point out that the FCC has not taken steps to limit the extent to which potential relocation costs of terrestrial systems are still being incurred. At present, for example, the Commission's Mass Media Bureau is continuing to license BAS stations in the 1990-2025 MHz band and its Wireless Bureau is continuing to license FS licenses in the 2165-2200 MHz band. Though the Commission has previously stated (in its "Emerging Technologies" proceeding) that most microwave facilities licensed after January, 1992 will not qualify for reimbursement for their

⁶NPRM, ¶54-57.

⁷NPRM, ¶55.

relocation expenses,⁸ it has made no similar pledge regarding BAS facilities. And, in any case, the more stations which are operating in these bands at such time as relocation does take place, the more difficult and expensive it will be. The Canadian government has placed a moratorium on the licensing of microwave stations in the 1990-2025 MHz band, ensuring that any coordination conflicts are not compounded.⁹ At the least, the FCC should state that BAS facilities in the 1990-2025 MHz band licensed after January, 1999 will be "secondary" and will not qualify for relocation assistance. And preferably, the FCC should impose a moratorium on new BAS and FS licenses in the 1990-2025 and 2165-2200 MHz bands.

III. U.S. Earth Station Licensees Should Share In Relocation Costs

The NPRM also ignored the fact that some of the entities seeking to provide MSS service, such as TMI, are not seeking U.S. earth station licenses in this proceeding. (TMI and certain other parties will act as private carriers' carriers, supplying space segment capacity to distributors holding earth station licenses.)

⁸See, e.g. Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886, 6891-6892 (1992).

⁹See Industry Canada, "Revisions to the Canadian Table of Frequency Allocations - 1998," Section 3.3.1, www.ic.gc.ca.

Thus, the NPRM did not discuss whether earth station licensees should share in the obligation to pay the retuning/replacement/removal expenses of BAS and FS incumbents.¹⁰ TMI believes that parties holding space segment authorizations should be able to obtain some reasonable partial reimbursement from earth station licensee customers, as such customers will benefit financially from the provision of 2 GHz MSS services and should thus share in the financial burdens of the relocation of terrestrial licensees.

CONCLUSION

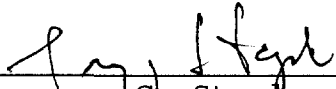
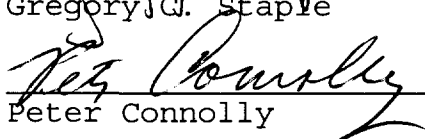
TMI suggests that the FCC should take steps to limit relocation payments and should strive to make overall contributions by MSS systems equitable by requiring reimbursement payments by earth station licensees.

Only by doing what can be done to reduce the potential payment exposure of MSS licensees will the FCC ensure that a competitive 2 GHz MSS service will actually come into existence.

¹⁰Cellular, ESMR, and PCS customers are not FCC licensees but many 2 GHz MSS "customers" will be. This is an important difference which should receive appropriate regulatory consideration.

Respectfully submitted,

**TMI COMMUNICATIONS AND
COMPANY LIMITED PARTNERSHIP**

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